IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.911 OF 2005

WITH

CIVIL APPLICATION NO.1067 OF 2005

Vijay D. Desai & anr. ..Appellants.

Vs.

Alfred Earnest Rebello ..Respondent.

....

Mr.A.V.Anturkar with Mr.R.D.Suryawanshi for the Appellants.

Mr.S.R.Mishra for the Respondent.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

29th November 2005.

P.C. :

1. Admit. By consent taken up for hearing and final disposal.

2. The present appeal arises out of an order passed by the Learned Trial Judge dismissing an

application for the grant of interim relief in a suit for specific performance.

3. There are two agreements; the first agreement dated 11th October, 1988 is between the Second Plaintiff and the Defendant where as the second agreement dated 3rd April, 1991 is between the First Plaintiff and the Second Plaintiff. The Learned Trial Judge while declining to grant interim relief proceeded on the footing that the Defendant was not a party to the second agreement dated 3rd April, 1991 between the First and the Second Plaintiff and that since the title of the Second Plaintiff was not perfected under the agreement dated 11th October, 1988 he could not have assigned his rights on 3rd April, 1991. On behalf of the Appellants - Plaintiffs, the attention of the Court has been drawn to the agreement dated 11th October, 1988 under which the suit property was agreed to be conveyed for a total consideration of Rs.2,65,000/- apart from which a residential flat admeasuring 500 sq.ft. and one shop admeasuring 150 sq.ft. was to be provided to the Defendant. Prima facie, it appears that the Learned Trial Judge was not correct in proceeding

on the basis that the Defendant had no knowledge whatsoever of the agreement between the First and the Second Plaintiff dated 3rd April, 1991. A deed of confirmation was executed by the Defendant on 9th April, 1991 and in clauses 7 and 8 thereof the Defendant stated thus :

> "7. I further declare and state that the said Shri Kishore Chimanlal Solanki sole Proprietor of M/s.Aavishkar Developers, is entitled to sell, transfer and assign his right under the said agreement dated 11/10/1988 in respect of the said portion to the said Shri. Vijay D. Desai Sole Proprietor of M/s. Vijay Developers.
>
> 8. I further declare and state that I am aware that the said Shri.Kishore Chimanlal Solanki has entered into an agreement in respect of the said portion with the said Shri.Vijay D. Desai which agreement has been executed with my full knowledge and consent and hereby record confirm that I consented and confirmed the said transfer by the said Kishore C. Solanki as also has

> verified, perused, understood and has confirmed the terms and conditions of the said agreement. I further declare and state that I have received a copy of the said agreement with me."

4. In addition thereto, it is contended that the Defendant executed five powers of attorney in favour of the First Plaintiff and that it was the First Plaintiff who entered into agreements with tenants in respect of the suit property. A possession receipt has been relied upon under which, it has been stated that possession was handed over to the First Plaintiff on 3rd April, 1991. There was also a receipt for the payment of consideration of the amount of Rs.2,05,000/- by cheques dated 3rd April, 1991 and 3rd May, 1991. It is the case of the Defendant that these payments were never received and they were siphoned off by the First Plaintiff. This is a matter of trial. At this stage having regard to the nature of the documents on the record including the deed of confirmation executed by the Defendant, it cannot be said that the triable issues do not arise. An ad interim injunction was initially granted by the

Trial Court on 15th February, 2003. In an Appeal from Order this Court remitted the matter back to the Learned Trial Judge on 31st March, 2003 and the order of status quo was directed to be continued. It is not disputed between the parties that the order of status quo has been continued. Having regard to the totality of the facts and circumstances of the case, therefore, this is a fit and proper case where the order of status quo should be continued and the Learned Trial Judge should be requested to expedite the disposal of the suit. The Learned Trial Judge shall endeavour to dispose of the suit within a period of six months from the date on which a certified copy of this order is produced before him. It is expressly clarified that all the observations herein are a prima facie evaluation confined to the disposal of application for interim relief. The Learned Trial Judge shall dispose of the suit uninfluenced by these observations. In the circumstances, the impugned order of the Learned Trial Judge dated 3rd September, 2005 is quashed and set aside. The Respondent shall maintain status quo during the pendency of the suit. The Appeal is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.